

# REFUGEE UPDATE

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## A TRIBUTE TO NANCY POCOCK: BELOVED MOTHER TO REFUGEES AND MARGINALIZED

BY: EZAT MOSSALLANEJAD

It was on Thursday March 5, 1998, when my friend and mentor at the Inter-Church Committee for Refugees, Fred Franklin, called me at the Canadian Centre for Victims of Torture and told me the sad news of Nancy's death. It was a shock to me, so unbelievable that I lost my power of speech for a while. I had seen Nancy a few days back at the monthly meeting of the Toronto Refugee Affairs Council. We discussed, among other things, the Immigration Legislative Review Committee Report and the celebration of Refugee Rights Day on April 3rd and 4th.

I have had the privilege of working with Nancy for the last 7 years. From the very beginning, I found her a source of inspiration for refugees and refugee rights workers all over the country. Despite her age, 87 at the time she died, she worked with the enthusiasm of a teenager with

Nancy Meek Pocock



Oct. 24, 1910 - Mar. 4, 1998

various organizations - the Quaker's Committee for Refugees, the Inter-Church Committee for Refugees, the Canadian Council for Refugees, the Toronto Refugee Affairs Council, etc.

I have seen wonderful colleagues burned out after several years of working under stress. Nancy was different. She hardly complained; she never got compassion-fatigue; she tolerated personal suffering and poor health and fought against injustice with a heroic stoicism. She was one of the rare personalities of our epoch who had devoted her entire private life to the protection of the most vulnerable section of our society - refugees and uprooted people. I have seen her many times shedding bitter tears for refugees who had exhausted all legal remedies in Canada. Her house was a refuge for people who were denied protection by the Canadian refugee

*"Everyone is quick to blame the alien."*  
*Aeschylus (463 BC)*

*Ezat Mossallanejad is the editor of Refugee Update and a counsellor at the Canadian Centre for the Victims of Torture*

In her last effort, "Majid said, "to protest against the new immigration legislative measure, she called and expressed her sadness not to be able to participate in our demonstration. She promised to join us when she felt better. Now she is resting in peace with her beloved husband. We promise her 'not to give up'.

Nancy will always be remembered for her hard work, persistence, wisdom, devotion, integrity, humanity and sincerity. She lives on in the lives of thousands of refugees - in Canada, Vietnam, U.S.A., Central and South America and elsewhere - who have benefited from her multifaceted services. In the words of Majid Pahlavan, a refugee, refugee advocate and a friend of Nancy, "her name has penetrated our hearts and remains there as our mother."

Nancy combined face to face service to vulnerable refugees and uprooted people with refugee protection and advocacy. For her, refugee advocacy was not a struggle in isolation. It was rather a part and parcel of an overall campaign for faith, justice and fundamental rights for humankind.

While laying on a stretcher in a crowded emergency department she managed to write a letter seeking support for a refugee. Mama Nancy died on Wednesday, March 4th, 1998 at 4:30 pm, surrounded by family and friends from many countries.

Despite her total devotion for the cause and her extremely busy schedule, she never forgot her family responsibility. "She was a supportive, patient, helpful and loving mother," said her daughter Judy Pocock.

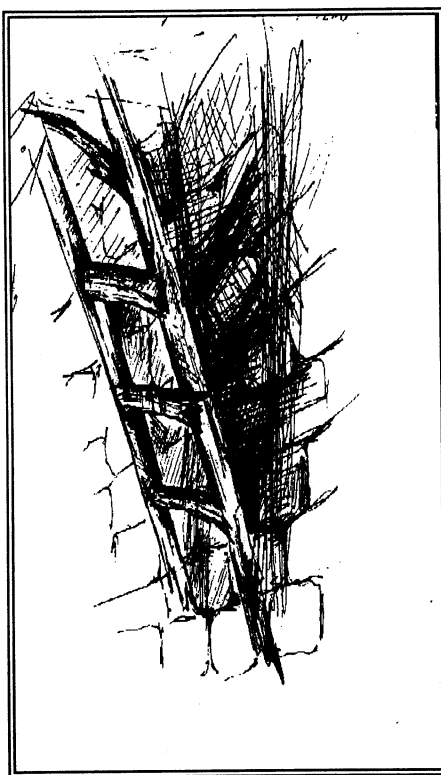
She will also be remembered as an organizer of public protests against nuclear missiles, as a founding member of the Voice of Women, the Grindstone Island Peace Project and Project Ploughshares, and as the coordinator of the Toronto Refugee Affairs Council.

Invited to Vietnam on five different occasions, the first while the war was still on. Today, a medical clinic in Vietnam bears her name and she was awarded the Medal of Friendship from the Socialist Republic of Vietnam in 1978. She received many other awards and recognitions including the Pearson Peace Prize in 1987, an Honourary Doctorate of Divinity from Queen's University in 1990 and the Order of Ontario in 1992.

In 1950, while still living on Gerrard Street, Nancy and Jack joined the Toronto Monthly Meeting of the Friends, a decision that would shape much of the rest of their lives. In the late nineteen sixties they moved to a house on Hazelton Avenue. It was here that they first opened their home to draft dodgers and deserters coming to Canada rather than fight with the US forces in Vietnam.

In February 1975, only months after the end of the Vietnam war, Nancy lost her beloved husband. Nancy continued their struggle alone working for refugees and marginalized people at national and global levels. She was

returned home to Canada in 1944 only weeks before the birth of their daughter Judy.



as Nancy was later to Canada where, she spent close to a year in Paris studying the art of jewelry making. She married Jack Pocock in 1942. Soon after that, Jack was sent overseas to fight Fascism. In Europe, he was injured and returned home to

to Canada where, she spent close to a year in Paris studying the art of jewelry making. She married Jack Pocock in 1942. Soon after that, Jack was sent overseas to fight Fascism. In Europe, he was injured and returned home to

productive life. Nancy Meek Pocock was born in Chicago, Illinois on October 24, 1910. At the age of 10, she moved to Canada where,

# LIMBO IS NOW A SOCIAL FACT

BY MARY JO LEDDY

When I first met Sami Durgun he seemed like a sweet young man who told jokes so bad they were almost good.

However, his ten years in Canada have become something of a cruel joke. A joke so bad that he has to make a personal statement by holding a round the clock vigil outside government offices for the last 22 days and nights. He has stood through the bitter cold, slept through the relentless noise of the city's nights. He is determined to stay there until he gets his landed immigrant papers which were promised to him five years ago.

Ironically, Sami came to Canada because he did not want to fight. Drafted into the Turkish army, he was asked to go and fight against his own people, the Kurds. Unwilling to fight, he knew he would be killed if he disobeyed. Sami came to Canada to seek protection as a refugee and it is here that he has learned how to struggle.

I have spent a great deal of time with him over the past three weeks and I have seen a young man, who once thought he'd like to audition for "The Young and the Restless", become someone who knows who he is and what he is willing to stand for. Not many of us know this.

During his vigil he has been visited by many people who admire anyone who refuses to fold and be filed away in a bureaucracy of forgetfulness. He has learned that there are hundreds, probably thousands, of people like himself—refugees who have not been rejected by Canada but who have not really been accepted.

In some classical theological writings, limbo was a spiritual state of someone who (through no fault of one's own) went neither to heaven nor to hell. In Canada today, limbo has become a new social reality. Refugees who have escaped the hellish realities of their own countries are nevertheless denied the possibility of living fully in Canada. Their lives are put on hold for years as they wait for their "landed" papers.

Without those papers, they cannot enroll in universities or colleges or take any significant training. Classified as "temporary" workers, they are placed at the bottom of any job application process. They cannot even start their own business or take out a bank loan. Many live in intractable anguish knowing that



they cannot bring their spouses or children to this country until they are landed.

The waiting can go on for years and in the process, a whole underclass of people is being created—people separated from their families, vulnerable to exploitation by unscrupulous landlords or employers, young people without any future. The social cost to these people, and for the country, is enormous. Instead of helping people to stand on their own and make a contribution to this country, we have hobbled these refugees, crippled their hope.

They wait while immigration officials take years to check their identity papers and conduct "security" checks. Of course, such checking is important but the longer it goes on the greater the possibility of limbo becoming a permanent state of mind.

At the moment, refugees have no way of questioning the process which leaves them caught between dying and living. A single immigration officer has the power to dismiss their documents or to pencil in a suspicion in their file.

Questions are now being raised about this process which appears to be without time limits. As one Member of Parliament said to me, "This is silly. If the officers don't know who a person is and why they are here in a few years then I doubt they'll know much more in another few years."

For Sami Durgun such silliness has had serious implications. He has lost ten of the best years of his life (from the age of 25 to 35). Because he has not been landed, he has been unable to get his diploma from the Business Logistics course he completed and thus has been forced to turn down excellent job offers.

Condemned to welfare, waking every morning to face the walls of his existence, he decided to make the suffering of his waiting public.

His vigil is an act of hope and an act of faith in us as Canadians.

*Mary Jo Leddy is an author and the coordinator of Romero House. Her book At the Border Called Hope has been nominated for the Trillium Award.*

# CHILDREN OR "HOSTAGES"

BY: AMARNA MOSCOTE AND GERALDINE SADOWAY

includes jurisdiction over education, the jurisdiction over immigration issues is shared.

The Immigration Act states that any person other than a permanent resident or Canadian citizen must obtain a student authorization from Immigration authorities before attending any "academic, professional or vocational training" in Canada. A person who is undocumented (i.e. living in Canada without any legal status) will not be granted a student authorization. There are special Immigration Act provisions for refugee claimants and their dependants to attend school: they will be issued a student authorization if they have been found "eligible" to have their refugee claim heard in Canada and their claim has been referred to the Immigration and Refugee Board. After a final negative determination of the refugee claim, if there are no further legal remedies available, the student authorization will probably not be renewed. [Immigration Act, section 10; Regulations ss. 14.1, 14.2, 14.3, 15 and 16].

However, the provinces have jurisdiction over people "residing" in each province, including school attendance of children. According to the Education Act of Ontario, every child between the ages of 6 and 16 must attend school, unless the parents have made suitable alternate arrangements, such as tutoring at home by a qualified person. Thus, parents and guardians are under a positive duty to ensure that children in their care between the ages of 6 and 16 attend school. [Ontario Education Act, section 21]

Normally, if a child is not a Canadian citizen or permanent resident of Canada, the school board which admits the child to the school must charge a fee, in accordance with the "regulations" (this would be a "foreign student fee"). The Education Act provides a specific exemption from the school fee if the child is a refugee or a refugee claimant whose claim has been referred to the Immigration and Refugee Board and has not been finally determined. However, PCLS has found that some school boards refuse to admit school age children who are refugee claimants in Canada until the Immigration officials provide the claimant with the "certificate of eligibility" to have the claim referred to the Immigration and Refugee Board, or the "student authorization" from



"The principal told me that if I didn't report to Immigration, my kids could not be enrolled in the school" - mother of 12 and 13 year old children, living without legal status in Canada.

According to the United Nations Convention on the Rights of the Child (CRC) which Canada ratified in 1991, one of the basic human rights of all children in the world is the right to education. Countries that signed the CRC agreed to "make primary education compulsory and available free to all." As a signatory state, Canada is required to ensure the human rights of all children who are in Canada, regardless of their immigration status and regardless of the status of their parents. Furthermore, countries that are signatories of the Convention undertake to ensure that, in all actions concerning children, "the best interests of the child shall be a primary consideration. Yet, experience at Parkdale Community Legal Services (PCLS) in Toronto over the past year found children in Toronto routinely denied basic education rights for weeks, months and even years, because of their own or their parents' immigration status. Children can be asked to provide school authorities with proof of Canadian citizenship or permanent resident status before being permitted to enrol in school. A birth certificate establishing the child's age and identity is not enough. The defacto "policy" is that children who are not landed and who lack a student authorization from Canadian immigration authorities, may not attend school without confirmation from the immigration authorities of their eligibility. School board officials did not provide copies of this "policy" to PCLS staff when asked, but several Toronto school principals mentioned the policy when asked about how children of undocumented immigrants are being treated. Part of the problem appears to be a failure to publicize information on children's rights in Ontario. There is also uncertainty as to whether children who are not citizens or landed immigrants fall within the jurisdiction of the provincial authorities, or of the federal authorities. While the provinces have jurisdiction over persons physically living in the province, and this clearly

Immigration. Usually it takes persistent calls to persons in authority in the school board bureaucracy, or the intervention of sympathetic school authorities (principals, teachers, secretaries, school trustees, etc.) to resolve this problem. It can sometimes take several months for the eligibility certificate to be issued, and even longer to get the student authorization. [Ontario Education Act.49] Often, by that time, the child will have missed several weeks if not months of school.

The situation is much more difficult when the parents' refugee claims have been refused, even if appeal procedures are still taking place, or if the parents and their children are living entirely without immigration documentation. A situation such as the one described above by the mother of the 12 and 13 years old, illustrates what can happen.

In fact, lack of immigration status should not prevent school authorities from allowing school age children to get their education. According to section 49.1 of the Ontario Education Act:

A person who is otherwise entitled to be admitted to a school and who is less than eighteen years of age shall not be refused admission because the person or the person's parent or guardian is unlawfully in Canada.

Based on this section, regardless of immigration status, a school board may not refuse admission to primary or high school in Ontario to a child under 18 years. This section has been used to get children into school when they and their parents are living in Canada without legal status. Usually this is attempted when the parents are applying to regularize their immigration status through a "humanitarian and compassionate" application for landing in Canada, but there is no reason why it could not be used to require school boards to admit undocumented children to school even if an application for landing has not been made by the parents.

In certain cases which have come to our attention at PCLS, failed refugees who have not been removed from Canada and who cannot be removed from Canada due to lack of documents or due to civil war conditions in their home country, have been told that their children are no longer eligible to attend school. In other cases, parents who are living in Canada without documentation have been told by school authorities that their child cannot be admitted to school unless they bring a letter from Immigration confirming that they are applying to remain in Canada. In one case reported to us, school authorities had even indicated to the parent that they were obliged to contact Immigration authorities themselves! Certainly, there is no such obligation of school authorities to report

undocumented children to Immigration authorities. The overriding concern should be the basic fundamental right of the child to be permitted to attend school. In these circumstances, parents who are afraid to contact Immigration keep their children out of school. Although it may not be done intentionally, children have become "hostages" for the enforcement of Canada's Immigration Act.

An important constitutional case was argued almost two decades ago in the United States, in Texas, where the right of undocumented children to attend public school was at issue. In this case, Plyer, Superintendent of the Tyler Independent School District and Its Board of Trustees et al, v. J. and R. Doe et al v. Certain Named and Unnamed Undocumented Alien Children et al, No.80-1538, June 15, 1982, the U.S. Supreme Court ruled that the undocumented alien children have the right to claim the benefit of the equal protection clause of the U.S. Constitution, and there is no national policy justifying the state denying the children an elementary education. It was noted in this case that the State could not punish the children for their parents' flouting of immigration laws and since the lack of education would have such profound and traumatic effects on the children concerned, education could not be withheld from "innocent children" unless it furthered "some substantial goal of the State". At PCLS we are ready to take on the challenge of making similar arguments in Canada based on the equality provisions of the Canadian Charter of Rights and Freedoms. And we will certainly be presenting the failure to ensure children's rights at the international bodies to which Canada is accountable.

*Amarna Moscote and Geraldine Sadoway, are working at Parkdale Community Legal Services*

### **Reports on El Salvador Available**

1. *Annual Report for the Year 1997* from the Office of the Ombudsman for the Defence of Human Rights.
2. *Human Rights in 1997* from the Institute of Human Rights, University of Central America.
3. *Six Years after the Peace Accords*, an interview with Dr. Marina Velasquez de Avilez, Ombudsman, El Salvador.

These reports are available in the office of FCJ Hamilton House Refugee Project. Ph: 416-469-9754

# THERE ARE RIGHTS WITHOUT STATUS

BY ALEX NEVE

who cannot access affordable health care.

The right to fair wages, to equal pay for work of

equal value, and to safe and healthy working conditions;

the right to be free from physical and psychological

violence, including sexual violence; the

right to education;

the right to health care. These are basic

human rights -

enshrined in international law, to a

degree in the Canadian Charter of

Rights, and even, in some cases, in

federal and provincial legislation - such

as the Criminal Code and the

Employment Standards and Education

Acts.

These are basic rights that are

not tied to immigration status or

nationality. They are rights that arise by

virtue of being a member of the human

family. Lets take it down to basics.

Human rights are an expression of our

universal belief in human dignity. That

sense of dignity is what we all owe each

other, wherever we may be, from

wherever we have come, and whatever

stamps and visas we may or may not

carry in our passports.

International human rights documents specify that

all individuals are to enjoy human rights without

distinction of any kind. One, the International Covenant

on Economic, Social and Cultural Rights does recognize

that there might be some limits when it comes to non-

nationals, but that only applies in developing states - an

excuse not open to Canada.

But the question, sadly a rhetorical one in today's

climate, is whether, in reality, there can be rights without

status? Without status, are most of these rights an illusion,

an unkept promise. Is it simply so risky and frightening

for people who live underground to fight for their rights,

so risky that those who offend against them and violate

their rights - be they spouses, employers, government

officials, or others - know that they can continue to do so

and pay no price.

Impunity is probably the biggest obstacle to real

human rights protection. When rights violations go

unpunished, rights violations continue. When torturers are

not prosecuted, they go on torturing and others follow in

their wake. Same thing here. Given that there are rarely

any consequences to violating the rights of people without

status - the violations go on, unchecked, and the end result

The following article is based on a speech at the conference Living Without Status in Canada: Human Rights Underground, held in Toronto March 2 - 3, 1998. Over 150 people attended, from Canada, the United States, Mexico, Central America and Europe. The

conference, funded by the Trillium Foundation and supported by the Canadian Auto-Workers and Steelworkers Unions, sought to examine the human rights challenges that are faced by the undocumented, share strategies for responding to those challenges and explore possibilities for future action and reform. Participants came from a variety of backgrounds, including women's shelters, health centres, legal clinics, schools and front-line agencies, and included many who have or are presently living without status in Canada. A report from the conference will be circulated widely.

Are there human rights

underground some of you may ask?

Why have human rights gone underground others may

wonder. It is important to talk about the legal and social

challenges of living in a country without status, and that

we are approaching those issues by talking about human

rights. That is precisely where we should begin. Fifty

years old this year, the Universal Declaration of Human

Rights begins with inspiring words:

Whereas recognition of the inherent

dignity and of the equal and inalienable

rights of all members of the human family

is the foundation of freedom, justice and

peace in the world.

All members of the human family - but we will be

discussing the way in which human rights protection

dramatically fades away for some members of the family -

those who live in Canada and in other countries without

status, who live underground. We will be talking about

undocumented workers who are underpaid, overworked,

sexually and racially harassed, and made to work in

dangerous and unhealthy conditions. We will talk about

undocumented women who endure horrifying domestic

violence because to turn to anyone for help would possibly

lead to deportation. We will talk about undocumented

kids, young children, who cannot get into schools, and

undocumented families, including mothers with newborns,

is that there really are no rights.

Among our goals is to bring these human rights abuses above ground and to bring the human rights above ground. Neither the rights nor the violation of those rights can remain hidden.

In Canada they are hidden. We have fooled ourselves into believing that the abuse of undocumented people isn't an issue - and if it is, it is on a very low scale. We accept that our neighbours to the South have millions of illegal aliens, hundreds coming over, through or under the Rio Grande every day -- and yes, there are some pretty nasty things that happen to those unfortunate souls. But that isn't Canada. In Canada there may be a few people - but not many. People don't need to live underground in Canada - we have a generous, open immigration system that makes that unnecessary.

But you are all here because you know that is not the case. You know there are tens, many say thousands of people living in this country without one single shred of lawful immigration status. Some have succeeded brilliantly - created false lives for themselves, and now hold down jobs, own homes and are seeing their children through school. Most, however, are leading tenuous, dangerous, isolated lives - vulnerable to abuse and exploitation.

Some would dismiss our concerns for the rights of these people. They would tell us it is a matter of choice. No one has forced them to come here, and most certainly not to remain here. No one said they could not apply for lawful status. Most of them wouldn't qualify for lawful status, or have already applied and been turned down - that is why they have to live underground. They should go home really. If a difficult life underground in Canada is the life they wish to choose for themselves - and sometimes their children - so be it, they have no one to blame but themselves.

But that is not what human rights are all about. The rights are not ours to give or take. Human rights belong to each human being.. They cannot be traded away. Rights aren't poker chips

Think about it in other contexts. Members of a religious minority are being tortured by the government, something you can't complain about because you could, after all, always convert to another faith. A battered woman isn't allowed to complain, because after all she chose to marry her spouse and to stay with him even once the violence started. She should have walked away. Employees of a company are being made to work in dangerous conditions - but they took the job, they could

work elsewhere - does that mean they don't get to complain, that their rights are not a concern. Most of us accept that these individuals have rights that should be protected. That they might have made choices at one point which have led or contributed to their predicament doesn't take away that right to protection. What are choices after all, how free are many of those choices and how easily really can those choices be undone?

People are forced or make the choice to live in Canada without status for many different reasons. Many are individuals who have come here to escape human rights abuse and violence. Afraid, unaware or misinformed, they might not come forward for months, years or not at all, to make a formal bid for protection by making a refugee claim..

Of those who do make refugee claims, many will be denied status. Even though the refugee claim is denied, many of these individuals have strong reasons to fear returning home. The present immigration system offers no effective opportunity to have their refusal reviewed. When deportation looms, many would prefer life underground in Canada to the threat of violence, imprisonment and possibly death that awaits at home.

Other people come to Canada to escape grinding poverty or to join family and close friends who may have already established themselves in Canada. They may enter the country initially with short-

term status as visitors, students or temporary workers. The strong economic and social ties that develop, however, may lead people to remain after that status has expired. In many cases, Canada becomes home, and to return to their country of birth would be difficult, even traumatic — more so when Canadian born children are involved.

These are the choices people make when they opt to stay in Canada. These are not casual choices. People do not go underground for the fun of it. These are choices about life and freedom, survival and being with family. But sadly they are choices that are punished at every turn. Why are there no rights without status? There are two ways to approach this. First we need to examine why these rights are meaningless for the undocumented. Why do we not have remedies and programs available - for battered women, exploited workers, young children who need to go to school, sick or injured individuals who need health care - remedies and programs which do not turn people, or discourage them from coming forward simply because their immigration papers are not in order. That is the rights side of the dilemma.



The Federal Court judge who heard the case turned us down. His reasoning was that his humanitarian and compassionate factors, including his 2 Canadian children, his soon-to-be-landed spouse, and glowing work record, all arose while he was in Canada illegally and to delay the removal in those circumstances would simply mean rewarding him for flouting the law. The judge concluded that this man did not come to the court with clean hands, and that the court would, therefore, not assist him. That was the entire basis for the decision. The implications of removal for this young family, the rights that were at stake, were left to the side, unexamined. For this Federal Court judge if you live here illegally you don't have rights. The removal went ahead. Six months after removal, the h&c application was finally reviewed and accepted. He will likely be back from Ghana within the next few months. He will have been apart from his 2 young children for a year. So much for undocumented rights and children's rights in Canada.

**THERE ARE RIGHTS WITHOUT STATUS.**

This situation can only get worse. The proposals that have been made to the Minister by the Legislative Review panel are real clear when it comes to individuals who have no status in Canada. Commendable suggestions are made for improving and broadening family sponsorship provisions, but one group is left completely off the table - "applications made in Canada by persons without legal status in Canada should not be processed." Nothing much else remains. Humanitarian and compassionate decision-making would be replaced with something called "residual powers", to be used only in the most exceptional of circumstances, at the whim of the Minister and high level bureaucrats, with no accountability, not even a requirement that they reach a decision when a plea is made. So, our challenge is clearly a big one. To open up remedies, so that there are safe and meaningful ways for the undocumented to enforce their basic rights. And, to help provide that safety - create real and meaningful opportunities to obtain status, even after years living without it. Remember the Universal Declaration - the inherent dignity, the equal and inalienable rights of all members of the human family - is the foundation of freedom, justice and peace in the world. There are rights without status. Now we just have to convince the government, the courts, the public - and, to a large degree, the undocumented themselves.

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But we also need to look at the status side. If status is the key to rights, even if it should not be, what can we do about helping deserving people get status. Canada's immigration and refugee systems do not look favourably on those who live underground. If you make a refugee claim after living a time in Canada first - with or without status - delay will inevitably be held against you. There is very little understanding or sympathy for the complicated factors that make it difficult for people to come forward promptly and seek protection. New proposals, in a report recently submitted to the Minister of Immigration, would go further, and make it practically impossible for anyone to make a refugee claim if they fail to do so in the first 3 days after their arrival in Canada. The only other option open to people seeking to regularize their status is what is known as a humanitarian and compassionate application. These wonderful words hide a cruel joke. The h&c process is not kind to the undocumented. Unless you have married a Canadian citizen or permanent resident, it is highly unlikely that your case, no matter how compelling, will be accepted. There once was a tradition of allowing individuals who had lived underground for periods such as seven years to come forward and regularize their status through the long-term de facto residents policy. The policy recognized that it was as much in the interests of Canadian society - if for no other reason than to collect tax revenue - as it was fair to the person concerned. That has been dropped from the guidelines for humanitarian and compassionate decision-making leaves it off the list completely. Living underground is now often penalized, even when other compelling factors exist. Last year I represented a Ghanaian man, a refused refugee claimant, who was supposed to have reported for removal in 1992 and did not. From 1992 until 1997 he lived underground, gainfully employed as a talented welder. He married a Ghanaian woman whose own application for permanent residence had been approved, but through usual processing delays, she did not actually become a permanent resident until 3 months after he was removed from Canada. She too was employed. They had two children, in 1994 and 1996, and he was a very loving father. In early 1997 they decided that it was time for him to come forward. Without seeking counsel or assistance, he presented himself at an Immigration office, and was immediately detained. He remained in detention for 4 months. We made an h&c application, but no decision was reached before his removal. We went to Federal Court seeking an order to delay the removal until the h&c application could be decided.



# THE LEGISLATIVE REVIEW COMMITTEE RECOMMENDATIONS

BY EZAT MOSSALLANEJAD

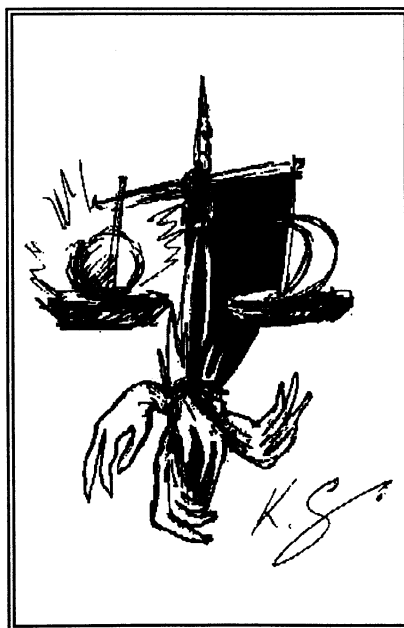
**I. Introduction** The imminent entry into the 21st century has new challenges before Western governments, some of them quite unprecedented. The forces of globalization have widened the gap between the rich and the poor, the result of which is the growing rates of marginalization at national and international levels and the movement of people either in search of protection or more favourable living condition. These have prompted Western governments including Canada to take proactive measures. The appointment of the Immigration Legislative Review Committee(LRC), in December 1996, by the Minister of Citizenship and Immigration is a futuristic initiative to control the movement of people and respond to the economic stagnation facing the country. Since the Implementation of the Immigration Act in 1978, this is the 30th amendment. It is being done in an atmosphere of racism and xenophobia and down-sizing in all levels of the government. hopefully, the process in Canada will not be just one more prolonged debate. Concrete steps can be taken immediately in several areas - like family reunion for Convention refugees.

## II. Consultation Process

In January 1998, the Report of LRC was released and the Minister held hearings at selected points across the country in February and March. Despite scores of requests by NGOs, only sixty organizations were invited. This practice of consultation, contradicts the LRC productive recommendations about consultations with NGOs: "provisions for formal, structured consultations on significant policy developments" (Rec. 23) and creation of a Protection Advisory Committee (Rec. 86). Government's Consultations with NGOs will be constructive if they go beyond lip service and pay special attention to NGOs concerns. Meaningful consultations could be achieved by full and equal participation of NGOs, experts and affected communities. As mentioned by LRC, with regards to NGOs, the government,

"...occasionally fears them, sometimes ignores them when it should consult them, and often seems to take for granted their effectiveness or their ability to respond locally to emergencies." (LRC report Chapter 3.4)

LRC is right in its conclusion that instead of "sporadic" consultations "without follow-up or with results shrouded in secrecy", "consultations should be more than just a lobby opportunity for NGOs. There must be a will on the part of both NGOs and the government to use those sessions for genuine advice and problem solving that goes beyond finger pointing and recrimination." (LRC report Chapter 3.4)



## III. Positive Recommendations

1. The Committee has attempted to have a comprehensive and holistic approach to the protection needs of individuals. Given the new realities, especially the post Cold War needs of protection, there is an urgent need for international community to revitalize and to go beyond the Refugee Convention of 1951 and its 1967 Protocol. Reference to additional international instruments of protection is one of the positive aspects of the LRC proposals. It is necessary to address the protection needs of different vulnerable groups who are too often left unprotected under the current Immigration Act: torture survivors, victims of war and generalized violence, unaccompanied minors, victims of gender-related persecution and domestic violence, etc. This long overdue attention by the government could provide Canada with an opportunity to play a pioneering role in international protection debates and practices. In the words of LRC:

"as Canada became party to new international conventions, it became necessary to tack on procedures to take into account how those obligations could be met for each individual case....Protection of rights of the child and protection against torture and slavery are as

important as protection against persecution based on race, religion and other refugee grounds" (Chapter 7.8).

2. In its recommendations 2 and 3, the LRC has made provisions for the creation of a separate Protection Act. This could be a positive approach and was suggested by some NGOs. Protection is a human rights issue which should be dealt with accordingly.

3. Frequent references to victims of torture is another good aspect of the report of the LRC. The fact that Canada signed the Convention Against Torture in 1995 is not adequate. There is an urgent need for the incorporation of the Convention into Canadian legislation and explicit reference to it in Protection Act. A good precedent for this is the attempt by the U.S. Senate to pass the Torture Victims Relief Act.

4. The LRC has addressed one of the major deficiencies of our current protection system: the lack of a meaningful appeal in the refugee determination system (Rec. 108). There is a proposal for an appeal on the merits. This proposal can serve the ideals of justice on the one hand and minimization of costs on the other. The process of appeal on merits can provide protection seekers with the opportunity to submit new evidence. There have been many victims of torture and sexual abuse whose stories of trauma are left untold in their initial hearings. There will be a need for the appeal process to allow these vulnerable groups present their own testimony.

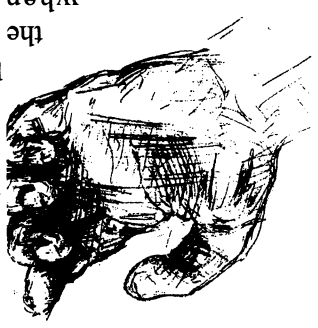
5. The use of protection criteria alone (Rec. 87) is another positive aspect of the LRC report. NGOs' experience confirms the finding of the LRC that "under the current system, overseas applicants who meet the protection criteria must also satisfy a visa officer that they are likely to establish themselves successfully in Canada. In our view, this gives priority to most economically viable of the world's refugee population rather than to those most in need." Therefore, we share with LRC that in overseas selection, decisions should be based on the needs of protection rather than settlement criteria.

6. The emphasis on giving "priority to the most vulnerable and those most in need" (Rec. 88) can be considered as a positive aspect of the LRC report so long as it does not become a tool for preventing resettlement in general. It could better help victims of torture, war and generalized violence. Their timely resettlement is instrumental in early diagnosis of the symptoms of their Post Traumatic Stress Disorder and acceleration of their treatment. Adaptation and integration will be more problematic for these vulnerable groups if they remain in an unsuitable

condition of retraumatization for a long period of time.

7. Related aspect of the report is the LRC proposal to offer a special status to "persons abroad who are in urgent need of protection" (Rec. 93). This could be useful in the cases of torture survivors and women at risk who may remain vulnerable to the sequelae of torture and cruel treatment.

8. Another valuable proposal of the LRC would empower the Protection Officer to "grant protection without a protection determination interview" to protection seekers (including victims of torture) with "strong prima facie evidence of the need for protection" (7.10-2). It must be noted that such immediate attention should be available at all stages of the process of determination when a physical and/or psychological evidence of torture comes to the fore.



9. Recommendation Rec. No. 117 is in line with the special situation of vulnerable groups. It guarantees extensive medical care for them by special arrangement with the province of destination. However, the arrangement with the province of destination should be made on a permanent basis in a way that it does not delay urgent resettlement of people in need of protection.

10. Rec. 102 which calls for provision of 'comprehensive assistance services to protection claimants at the port of entry', could provide people who suffer from sequelae of war, trauma and torture and cultural shock with special counselling and immediate treatment.

#### IV. Areas which need further development

1. The proposal to move from a quasi-judicial body (IRB) to a Protection Agency composed of civil servants poses the question of the independence of the new institution and its officials. Such a model requires new resources and extensive training to ensure the combination of justice with efficiency. LRC is aware of the issue of the independence of Protection Agency. There are many unclear areas in LRC proposal for a Protection Agency to implement the Protection Act: the structure of the organization, the accountability of its officers, the process of hiring, etc. Dissatisfied with the functioning of the IRB, NGOs have frequently asked for more independence for this internationally recognized model. The LRC report

has the potential to erode the institution of asylum by reducing the refugee determination system to a bureaucratic appendage to the Immigration Department.

2. The attention of the LRC to the educational and training needs of officials at various levels (Rec. 10, 7.7-iii, etc.) is laudable. However, this training must include ongoing updates on persecution in different countries, information about gender related persecution, torture, retraumatization, sequelae of torture and Post Traumatic Stress Disorder. There are several NGOs with high levels of expertise in these areas. Training by such NGOs would be valuable.

3. Further work is needed to ensure that "all countries share properly in their responsibilities to provide solutions for those seeking protection" (7.10). Burden-sharing agreements should not lead Canada to lower its standards to the level of other countries. Safe Third Country proposals can be a little more than licenses to unload refugees on poorer and less powerful countries or to countries which can more easily refoule them. Furthermore, Rec. 95 and Rec. 96 should be improved in a way that Safe Third Country provisions remain in line with the principle of *non-refoulement* and pay a special attention to family links and vulnerable groups including and especially torture survivors.



4. Special attention is needed to the establishment of nationwide criteria on detention and to the human rights of detainees (Ch.9.6 & Rec. 165). People who are detained for immigration matters must be treated better than criminals. It is against Canadian humanitarian and compassionate traditions to keep even a few people

in our detention centres for a long period of time. The death of Michael Akhimen, a Nigerian refugee claimant at the Celebrity Inn Canada Immigration Holding Centre in Toronto, resulted in some changes to the condition of detention. However, much more work needs to be done. The new Protection Act should entrench IRB detention guidelines.

5. Further work must be done to ensure the smooth functioning of the transitional period between the old and the new Act. This should be done within a clear time-table

and deadline.

## V. Negative Areas

1. NGOs should oppose the provision that "if provisional status is lost or not granted because ...the claimant was undocumented or uncooperative ...the claimant would be detained" (7.10-1: First Interview). It is a well-known fact that many genuine refugees are undocumented due to the challenges they have raised against their oppressive governments. Furthermore, the provision leaves room for arbitrary decision-making.

2. The lack of a strong appeal on the merits in overseas selection is a major gap in LRC report. As mentioned before, the story of torture, rape and similar tragedies often remain untold in initial interviews.

3. There is a need for fundamental change to the requirements that claimants must "report to the protection agency within 3 business days and submit their claims for protection within 10 business days after reporting to the protection agency" (Chapter 7.10-2 & Rec. 101). This requirement, as acknowledged by LRC itself, "imposes a tight time frame" for protection seekers in general and survivors of torture in particular. Traumatized people need adequate time to get access to information and services, adjust themselves to a different and confusing system and understand the way of life in a totally new environment. Reasonable time limits can be imposed on the determination procedure but there is no need to limit the time for assessing the procedure. Such a limitation would affect persons with *sur place* protection needs, who may have left their countries temporarily and then discovered, due to changes in circumstances, that they cannot go back.

4. There is an urgent need for the removal of the three year waiting period for people without ID specified in Rec. 109. In some cases, it is highly difficult for people who have fought against and been tortured by tyrannical regimes to get identity documents from their victimizers. This is true for victims of war who escape countries with no organized and internationally recognized governments. This provision, which is intended to protect Canadian society from a handful of war criminals, should not unnecessarily punish thousands of genuine refugees. As ruled by a recent decision of the Federal Court of Canada, Trial Division (Friday May 9, 1997) in Case of *Hawa Said*, "a statutory declaration, in and of itself, in the absence of any other documentation, may be sufficient for the purpose of" identity.

5. The right to asylum will be eroded by the provision that

# "There is no sorrow above the loss of a native land" *Euripides (431 BC)*

*Ezat Mossallamejad is editor of Refugee Update and a counsellor at Canadian Centre for the Victims of Torture.*

Although constructive in some areas, the LRC report has many ambiguous and negative aspects. The process of nation-side consultations have been selective and limited. In some vital areas, LRC proposals have been made with a cost-saving rather than protection approach. Recommendations, sometimes, are made in a half-hearted manner with an attempt, perhaps, to please everyone—those inside the Department as well as those outside. NGOs should call for meaningful consultations and should vigorously oppose the negative aspects of the proposals.

## VII. Conclusion

Refugees and their advocates have witnessed serious problems in the refugee determination system due to utilization of the services of incompetent interpreters. This could be overcome by the availability of professional and competent interpreters. LRC report lacks criteria for selection of interpreters and the code of ethics they should observe in the process of protection determination.

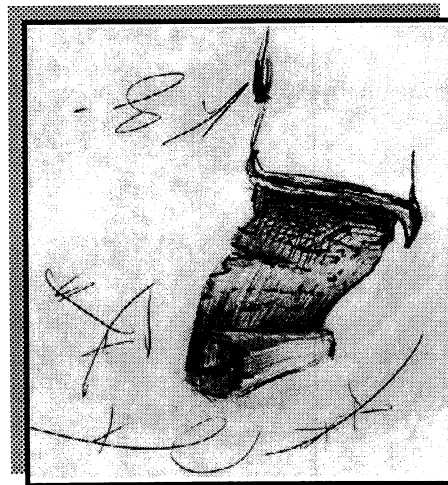
have not been removed due to government's inaction and are living in Canada for long periods of time. I propose the following stages in implementation of such a program: 1) public announcement of the program; 2) registration of people who live as "illegals"; 3) careful consideration of their cases for admissibility criteria; 4) Granting them temporary permission to stay; 5) landing them after 2 years provided that they work and pay taxes. If the government does not consider a sort of relief for unremoved deportees, it will have to face an underworld in Canada with an alternative system of uncontrollable and sophisticated underground relief and protection.

2. There have been frequent complaints against the Immigration Department and local CICs concerning the practice of racism, xenophobia and intolerance. Recognizing that these social ills seriously undermine coping potential of people in need of protection to start a new life in our multi-cultural and multi-faith society, there must be explicit reference to anti-racist and anti-xenophobic training for officials. There should also be a transparent system of accountability to that effect. It would be useful to provide an ombudsperson to receive complaints and deal with them urgently and efficiently.

1. The LRC report is silent about the thousands of people who are living in Canada with no status whatsoever. Among them are rejected refugee claimants which the government could not remove due to the prevalence of war or gross human rights violations in their countries of origin: Chinese, Iranians, Somalis, etc. With the end of DRROC program, these groups of people have been living in limbo with no action by the government to remove them. The arrest, detention and removal of thousands of people is not feasible given insufficient resources to implement such a program. We are particularly concerned about many torture survivors whose rejection was due to the gap in the current Immigration Act and the lack of an overall approach to the need for protection. It is acknowledged by the LRC itself that in the current protection system "some of Canada's international obligations, such as those contained in the Convention Against Torture have not been adequately incorporated into domestic legislation" (Chapter 7.8). At this juncture, when we want to have a new Protection Act, it will be healthy and in the long-term interest of the Canadian society to consider a conditional amnesty for people who

## VI. Areas where the Committee is silent

being removed to their countries of origin or their so-called countries of first asylum.



"the current period during which no new claim may be made should be extended from 90 days to one year" (Rec. 98). This provision is inconsistent with the nature of Protection Act which is willing to offer protection in all circumstances when the need arises. This provision is

redundant given the existence of a single procedure and a single Protection Agency. The one year period requirement for making a new claim might include protection in exceptional cases when protection seekers will face torture after being removed to their countries of origin or their so-called countries of first asylum.

# UPDATE ON THE CANADA-U.S. BORDER

BY: ROBBIE L. FARKAS-HUEZO

I work for Vive, Inc., a non-profit refugee advocacy and social service organization located in Buffalo, New York. Vive works almost exclusively with persons transiting the United States to apply for refugee status in Canada at the Canada-U.S. border. Recently, in a possibly life-threatening move, the U.S. Immigration and Naturalization Service (or INS) has begun intercepting and detaining refugees who have sought asylum in Canada.

Traditionally, and up until approximately three weeks ago, refugees presenting themselves to Canadian Immigration at the border near Buffalo were told to wait for Canada to process their application before admitting them to the country. They generally waited at Vive's refugee hospitality house in Buffalo for five to twenty-five days before being allowed to enter Canada.

In addition to these "northbound" refugees, Vive also sheltered a significant number of refugees who had lost their claims in Canada and were returned to the United States. Many of these persons would wait in the U.S. for ninety days, after which they could reapply to Canada. Significantly, approximately 50% of these reapplicants were successful in their second refugee claim.

During the past several weeks, however, there has emerged a drastic change in the way in which U.S. Immigration treats persons claiming refugee status at the Canada-U.S. border in the Buffalo INS region (which stretches from Buffalo, New York to the Vermont border). Previously, northbound refugee claimants were issued voluntary departures by INS, while those removed from Canada were put into deportation proceedings, but rarely detained. That, however, has all changed.

Official INS policy in the Buffalo region is now to detain and put into deportation proceedings any persons whom they determine have entered the U.S. with false documents or without being inspected by an INS official. This includes Canada-bound refugees, whether encountered before reaching the Canadian border or encountered upon returning from the Canadian border after having initiated a Canadian refugee claim.

In addition, INS has made a concerted effort to detain and put into deportation proceedings all failed refugee claimants returned from Canada to the U.S., with the exception of children.

This change in policy is having a disastrous effect upon the ability of refugees to make a refugee claim at the Canadian border, at least in the Buffalo region. By continuing to direct refugees back to the United States, where they are detained and put into deportation proceedings, Canada is, in effect, denying refugees access to the Canadian refugee determination system.

This denial of access has very serious consequences. To be sure, detained refugees are entitled to apply for asylum in the U.S., but it is extremely difficult to find and pay a lawyer and to collect necessary documents and evidence from a jail cell. Most detained refugees will be kept in jail until their cases are decided, and based on U.S. asylum statistics,

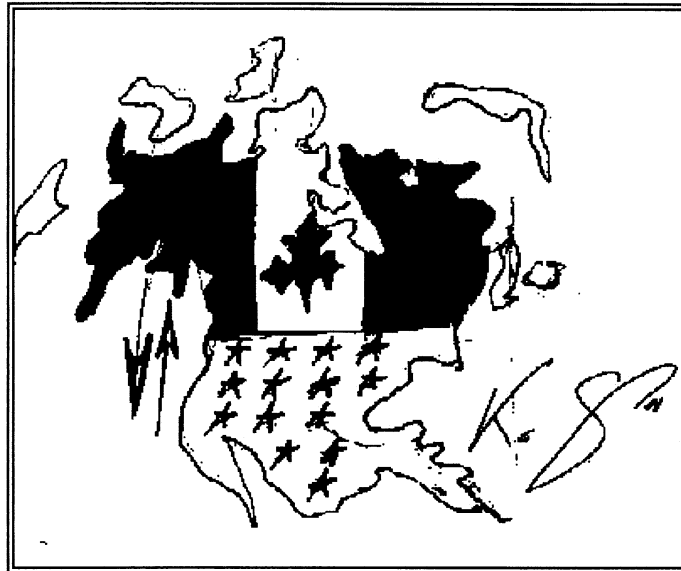
most will lose and be deported.

Ironically, even winning a refugee claim in the U.S., for those who do, presents a problem for these refugees, since it makes them ineligible to apply in Canada, which was their ultimate destination. Many have compelling reasons for wishing to be in Canada, such as the presence of family or friends here.

In light of all this, the question arises: what can we do about this grave situation? The Canadian Council for Refugees has offered several suggestions:

First and foremost, we must spread the word about this new policy. Refugee claimants in Canada need to know that they will most likely be jailed and deported if they are removed to the United States. Refugees coming through the U.S. en route to Canada need to know that they are in danger of being detained and deported from the U.S. before they can complete their Canadian refugee application. No refugee should go to the Canada-U.S. border without first consulting with a knowledgeable refugee lawyer or organization.

Secondly, if you have any information about what



A Vancouver representative of the UNHCR was on hand to receive a Letter of Concern addressed to the High Commissioner by the CKC-BC. In the letter the Karen group urged the UNHCR to press for more adequate protection for the refugees at the border. Issues touched upon included removal of the camps to a safe distance from the border area, full recognition of the refugee status of those living in the camps and strict adherence to a policy of *non-refoulement* by Thai authorities. The Vigil also heard from a representative of the Southern Sudanese Association of Greater Vancouver who told of the bombing of refugee camps in northern Uganda and acute food shortages facing more than three million refugees and internally displaced persons from his country. The Vancouver group has endorsed a proposal calling for creation of zones of security to protect the refugees from attacks by the Sudanese government.

GRAPHIC PRODUCED BY PAULI KALEMIKARIAN FOR THE REFUGEE AWARENESS WEEK TORONTO, 1994



Robbie L. Farkas-Huezo works at Vive-La Case, a shelter for refugee claimants in Buffalo, New York.

Whatever steps we take, let us be united in our determination to let immigration officials know that they must not deny refugees access to Canada's refugee determination system by continuing to return them to U.S. detention and U.S. deportation proceedings.

Following are some highlights about activities regarding Refugee Rights Day:  
 - In Vancouver, B.C., over 200 people gathered at a candlelight vigil, Friday April 3rd, in front of the offices of the UNHCR in a show of solidarity with the victims of recent attacks on camps at the Thai-Burma border. The vigil was called by the Canadian Karen Community of British Columbia. Following a colourful procession around the square led by the Karens, the meeting heard from representatives of local refugee rights groups and leaders of the local Karen and Burmese exile communities.

Refugee coalitions across Canada commemorated the anniversary of April 4th, 1985 in which the Supreme Court of Canada recognized that refugee claimants in Canada deserve the same standard of justice under the Canadian Charter of Rights and Freedoms as all others in this country. This ruling, known as the Singh Decision, promoted the standard of fairness that refugee claimants receive in Canada.

Refugee Rights Day was celebrated this year, throughout the country, in the context of the 50th anniversary of the Universal Declaration on Human Rights and its article 14 about the right to asylum. This year's celebration was marked with our disturbing awareness about the governments' deteriorating policies with regards to refugees and uprooted people.

# REFUGEE RIGHTS DAY ACROSS CANADA



is happening at the border, especially information from or about persons who have been detained, please pass this information on to the Canadian council for Refugees or a similar organization.  
 Finally, let us all look for opportunities to sound the alarm about what is happening. This can be accomplished through meetings with immigration officials, meetings with MP's, contacts with journalists, mobilization of our respective church, ethnic and advocacy groups.

Organismes de Montreal au Service des Refugies (TCMR) presented, for the first time, the film "Le Pont de l'exile" by Jean-Pierre Gariépy on April, 4th.

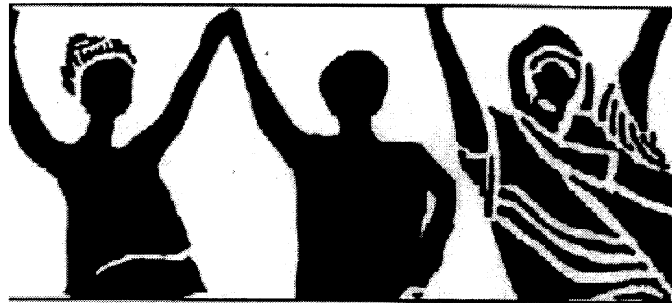
- *The Refugee and Immigrant Concerns Committee of Kitchener and Waterloo Area* celebrated twenty years of Refugee Sponsorship on April 5th at Kitchener City Hall Rotunda.

- *In London, Ontario*, a half-day conference sponsored by the Division of World Outreach of Middlesex Presbytery took place on Saturday April 4th, at First-St. Andrew's United Church.

- *In Thunder Bay*, on April 2nd, Doors to New Life Refugee Centre and Sleeping Giant Refugee Sponsorship

Group collaborated to put on an information mall display with people available to answer questions and promote the literature. .

- *In Toronto, Ontario*, Refugee Rights Day was proclaimed by Councillor Joe Mihevc on Friday April 3rd. Toronto Refugee Affairs Council (TRAC) along with other refugee rights groups and coalitions hosted a daylong workshop and celebrated the day at Metro Hall. The Culturelink popular Youth Theatre Group animated the occasion with a performance. Awards were presented to individuals and groups for their efforts to assist refugees. On Saturday April 4th, a celebratory evening was held at Church Street Community Centre.



## REFUGEE LANDING STATISTICS

Statistics for landings of refugees in 1997 show that Canada has become a home for an unusually small number of refugees.

In 1997 permanent residence was granted to:

**7,712 government-assisted refugees**

**2,658 privately sponsored refugees** (the lowest since the beginning of the program in 1979.)

**10,624 refugees recognized in Canada**

**For a total of 20,994** [the second lowest of the decade (only 1994 with 19,661 was lower)]

At 10,370 the total resettled (government + private) is also the lowest since 1979.

The number of refugees landed after determination in Canada is also way below the estimates for the year (14,000 - 18,000).

Source: Immigration Canada as compiled by the Canadian Council of Refugees



## Mama Nancy

There again  
On the old rotating and revolving earth  
Friends proved  
Love is not dead  
It is nourishing with us and among us  
Surprise, surprise  
She didn't bow  
She rose  
She conquered the hearts  
Admiration, glory, humbleness  
And love  
Here is Nancy.  
It is raining  
Just like the day I met her  
It is raining again.  
The mentor of thousands  
Sleeping in peace

Your home is on a sea of oil  
No matter who tortured you  
Who planted mines?  
Who burned your house?  
Make sure pipelines remain intact.  
You are not insured, no health coverage

No work permits  
Children have no school  
You're neglected?  
Too bad you'll be deported!  
There is no friend?  
Mama Nancy gone?  
You are sleepless?  
Annoyed? No appetite for food?  
Shaky life? Sheer state of limbo?  
Surprise, surprise  
The media has no room for you  
Your mother, your defender also  
Is ignored

I am proud to live in a country  
Which has nourished Mama  
And ashamed of media  
Which ignored her!

But  
There again  
Love overcomes  
Nancy lives with us!

Majid Pahalvan

## REFUGEE UPDATE

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